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SUPREME COURT OF THE UNITED STATES.

No. 116.—OCTOBER TERM, 1927.

American Railway Express Company, Petitioner, <i>vs.</i> F. S. Royster Guano Company.	}	On Writ of Certiorari to the Special Court of Ap- peals of the State of Virginia.
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[February 21, 1927.]

Mr. Justice McREYNOLDS delivered the opinion of the Court.

Following an agreement of June, 1918, by the Adams Express Company, American Express Company, Southern Express Company (a Georgia corporation) and Wells Fargo & Company, the principal concerns then engaged in express transportation throughout the Union, the American Railway Express Company was incorporated under the laws of Delaware and, by issuing its capital stock, acquired, July 1, 1918, all property of those carriers theretofore utilized in connection with such business. The Southern Express Company owned no other property located in Virginia. After this transfer it retired from the State; but in New York continued to hold valuable assets, including the stock of petitioner so received, and was solvent.

September 15, 1919, respondent sued the Southern Company in the Norfolk Circuit Court for the value of goods intrusted to it in 1917 for transportation from Richmond to Norfolk, Va., and lost. Summons was executed by delivering a copy to the Chairman of the State Corporation Commission and transmitting another to the defendant by mail. A special plea challenged the validity of the service upon the ground that the defendant had withdrawn from the State and was no longer a foreign corporation doing business there within the meaning of the Code provisions printed in the margin.* This special plea was overruled; defendant failed to plead further, and judgment went by default May 15, 1920.

*Section 1294g, subsec. 2-3, Virginia Code 1904—

(2) Every such corporation, company, association, person or partnership shall, by a written power of attorney, appoint some person residing in this

July, 1922, respondent here sued petitioner for the amount of the above-described judgment upon the theory that under the narrated circumstances the latter became liable for outstanding obligations of the Southern Company contracted in Virginia. After a full and fair hearing the trial court gave judgment therefor. The Special Court of Appeals affirmed this action. 141 Va. 602.

What we have said in *American Railway Express Co. v. Commonwealth of Kentucky*, decided this day, is enough to dispose of all material points raised here except the claim that the judgment against the Southern Express Company was void because not based on proper service of process; and that is without merit. Evidently the statute might reasonably be construed as intended to designate an agent upon whom process should be served in suits growing out of transactions within the State where the corporation had failed so to do. The state court gave the statute that effect, and we are bound by the result. *Mutual Reserve Association v. Phelps*, 190 U. S. 147, 158; *Hunter v. Mutual Reserve Life Insurance Co.*, 218 U. S. 573.

The judgment of the court below must be affirmed.

Mr. Justice SUTHERLAND and Mr. Justice BUTLER, dissent.

State its agent, upon whom may be served all lawful process against such corporation, company, association, person or partnership, and who shall be authorized to enter an appearance in its or his behalf. A copy of such power of authority, duly certified and authenticated, shall be filed with the State Corporation Commission, and copies thereof, duly certified by the clerk of the said commission, shall be received as evidence in all courts of this State.

(3) If any such agent shall be removed, resign, die, become insane, or otherwise incapable of acting, it shall be the duty of such corporation, company, association, person, or partnership, to appoint another agent in his place, as prescribed by the preceding section. And until such appointment is made, or during the absence of such agent of any such corporation, company, association, person or partnership, from the State, or if no such agent be appointed as prescribed by the preceding section, service of process may be upon the chairman of the State Corporation Commission, with like effect as upon the agent appointed by the company. The officer serving such process upon the chairman of the State Corporation Commission shall immediately transmit a copy thereof, by mail, to such corporation, company, association, person, or partnership, and state such fact in his return.